

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 104 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOPALPRASAD MERMESHWARPRASAD GUPTA

Versus

MADHURI PRASAD CHANDRKETU PRASAD

Appearance:

MR US BRAHMBHATT for Petitioner

MR BHARAT R PANDYA for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 15/04/97

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. Bharat Pandya, learned advocate appearing for the respondent.

2. Heard. This revision application is preferred against the impugned order dated 21/11/1996 rendered by the 2nd Joint District Judge, Ahmedabad (Rural) at Mirzapur in Civil Misc. Application No. 119 of 1996

condoning delay in preferring appeal against the decree for divorce passed in H.M.P. No. 42 of 1995. It is no-doubt true that there is some error committed by the learned Judge in stating that the opponent did not file his written statement in the application proceedings. The written statement has in fact been filed. Even then, on merits the learned 2nd Joint District Judge appears to be quite justified in condoning delay for the following reasons :-

The applicant has on oath stated that she did not know about filing of the petition and the proceedings having been conducted ex-parte against her. She came to know about the same only after the receipt of report from Blackcat Secret Service, the report dated 10/9/1996. Upon inquiry she came to know about the decree for divorce having been passed against her by the trial Court. She, therefore, moved the Court through her advocate for obtaining certified copy of the order of the Court, but the Record Keeper did not allow her advocate to see any of the papers. Hence, her advocate made an application to get entire record of the proceedings of H.M.P. No. 42 of 1995 on 24/9/1996 and the certified copies were supplied to her advocate on 23/10/1996 and the appeal alongwith the Misc. Application for condonation of delay came to be filed on 1/11/1996. Even on that day the decree was not drawn and, therefore, the appeal could not be said to be barred by law of limitation as by virtue of section 28 of the Hindu Marriage Act the appeal is required to be filed against the decree. The application appears to have been moved by way of abundant caution and the facts set out in the application on oath would deserve consideration and acceptance for the purpose of condonation of delay. The learned District Judge has clearly observed that the delay that has been caused is not deliberate and that the petitioner could not be said to be aware of the proceedings of H.M.P. No. 42 of 1995 against her. The learned 2nd Joint District Judge, therefore, appears to be quite justified in condoning delay.

3. I have heard Mr. Brahmhatt on the question that delay with regard to passage of every day is required to be explained. I am of the opinion that the facts and circumstances set out by the opponent (applicant of the Misc. Application) do explain the passage of time do show sufficient cause for condonation of delay. The written statement mainly containing denial of the averments in the application for condonation of delay will have no consequence on the cause shown by the opponant (applicant of Misc. Application).

4. In the facts of the case, therefore, this revision application moved against the impugned order of condonation of delay cannot be entertained. Rule is discharged. No order as to costs.

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